

No. 3901

United States
Circuit Court of Appeals

For the Ninth Circuit. 19

LOU RAFFOUR, CHARGED AS LOU TAFFOUR,
Plaintiff in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court, for the Southern District of Cal-
ifornia, Southern Division.

FILED
JUL 28 1922
F. D. MONCKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Plaintiff in Error:

LEO V. YOUNGWORTH and HARRY J.
McCLEAN, Esqs., Merchants National Bank
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For Defendants in Error:

JOSEPH C. BURKE, Esq., United States Dis-
trict Attorney.

JOHN R. LAYNG, Esq., Assistant United States
District Attorney.

UNITED STATES OF AMERICA, SS.

To UNITED STATES OF AMERICA, and the
HONORABLE J. C. BURKE, United States
District Attorney, Southern District of California,

GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 27th day of June A. D. 1922, pursuant to Writ of Error in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain proceeding United States versus Lou Raffour, defendant. and you are ordered to show cause, if any there be, why the judgment in the said proceeding mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OSCAR A. TRIPPET United States District Judge for the Southern District of California, this 31 day of May, A. D. 1922, and of the Independence of the United States, the one hundred and Forty Six.

Trippet

U. S. District Judge for the Southern District of California.

Approved as to form, as provided in rule 45.

Joseph C. Burke

By John R. Layng

Attorney.

[Endorsed]: No. 3404, S. D. In the United States Circuit Court of Appeals for the NINTH CIRCUIT UNITED STATES OF AMERICA vs. LOU RAFFOUR, Citation FILED JUN 2, 1922 at—min past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E. Wire Deputy

UNITED STATES OF AMERICA, SS.

The President of the United States of America,

To the Judges of the District Court of the United States, for the Southern District of California,
GREETING:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said District Court, before you between United States, plaintiff versus Lou Raffour, defendant a manifest error hath happened, to the great damage of the said defendant as by his complaint appears, and it being fit, that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, on the 27th day of June next, in the said United States Circuit Court

No.

Filed

Viol. Sec. 3 and 21, Title II, of the National Prohibition Act of October 28, 1919.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

vs

LOU TAFFOUR,

Defendant.

INFORMATION

Leave of Court first being had and obtained, comes now Robert O'Connor, Esq., United States Attorney for the Southern District of California, who for the said United States of America in this behalf prosecutes, on this 7th day of November, A. D. 1921, in the July term thereof, and for said United States gives the Court to understand and be informed:

That LOU TAFFOUR, whose full and true name, other than as herein stated, is to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 1st day of October A. D. 1921, at 536 State St., in the City of Santa Barbara, County of Santa Barbara, within said division and district, and within the jurisdic-

tion of the United States and this Honorable Court, did knowingly, wilfully and unlawfully have in his possession for beverage purposes certain intoxicating liquor, to-wit: three (3) quarts of Moonshine Brandy, containing alcohol in excess of one-half of one per cent by volume; in violation of Section 3, Title II of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

SECOND COUNT

And the said Robert O'Connor, who prosecutes for the United States as aforesaid, does further give the Court to understand and be informed:

That LOU RAFFOUR, whose full and true name, other than as herein stated, is to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 17th day of October, A. D. 1921, at 536 State St., in the City of Santa Barbara, County of Santa Barbara, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully have in his possession for beverage purposes certain intoxicating liquor, to-wit: one bottle each of Kola Quina, Ferro Chino, Huffland Bitters and Raisin Wine, containing alcohol in excess of one-half of one per cent by volume; in violation of Section 3, Title II, of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

THIRD COUNT

And the said Robert O'Connor, who prosecutes for the United States as aforesaid, does further give the Court to understand and be informed:

That LOU RAFFOUR, whose full and true name, other than as herein stated, is to affiant unknown, late of the Southern Division of the Southern District of California, heretofore, to-wit: on or about the 17th day of October, A. D. 1921, at 536 State St., in the City of Santa Barbara, County of Santa Barbara, within said division and district, and within the jurisdiction of the United States and this Honorable Court, did knowingly, wilfully and unlawfully maintain a common nuisance, to-wit: a room, building and place at 536 State St., in the said City of Santa Barbara, where intoxicating liquor, to-wit: Moonshine Brandy and Huffland Bitters and Raisin Wine then and there containing alcohol in excess of one-half of one per cent by volume, were kept, sold and bartered for beverage purposes; in violation of section 21, Title II of the National Prohibition Act of October 28, 1919;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States.

WHEREUPON, the said Attorney for the United States, who prosecutes as aforesaid in this behalf,

[Endorsed]: No. 3404 Cr IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. INFORMATION Filed Nov. 7 - 1921 at —min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Louis J Somers Deputy Bond \$1000

At a stated term, to wit, the July Term, A. D. 1921, of the District Court of the united States of America, within and for the Southern Division of the Southern District of California held at the court room thereof, in the City of Los Angeles, on Monday the 7th day of November in the year of our Lord one thousand nine hundred and twenty one.

PRESENT: THE HONORABLE OSCAR A. TRIPPET, District Judge.

United States of America,)
 Plaintiff)
 vs.) No. 3404 Crim. S. D.
Lou Taffour)
 Defendant.)

A verified Information having been presented to the court at this time, EX PARTE, by Mark L. Herron, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, it is by the court ordered, pursuant to a motion made by said attorney, that said Information be filed and the bond of defendant Lou Taffour fixed in the sum of \$1000.00; and this cause

coming on at this time for arraignment and plea; defendant Lou Taffour being present in Court with his attorney E. E. Van Bever, Esq., and defendant having been called and arraigned and having stated his name to be Lou Raffour and upon being required to plead, having enterposed his plea of NOT GUILTY, it is by the court ordered that this cause be continued to December 13th, 1921, for trial.

AT A STATED TERM, to wit, the January Term, A. D. 1922 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court room thereof, in the city of Los Angeles on Tuesday the 21st day of March in the year of our Lord one thousand nine hundred and twenty two.

PRESENT: THE HONORABLE OSCAR A. TRIPPET, District Judge.

United States of America,)	
Plaintiff)	
vs	)	No. 3404 Crim. S. D.
Lou Raffour)	
Defendant)	

This cause coming on at this time for the trial of defendant Lou Raffour before a jury to be impanelled herein; T. F. Green, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, and defendant being present in court with his attorney Emile V. Van Bever, and counsel for the respective parties having announced their readiness to proceed with the trial

of this cause and the court having ordered that this cause be proceeded with and that a jury be impanelled herein; and

Thereupon the following twelve names were drawn from the jury box, to wit:

H. M. Rosine; Otis E. Tiffany; C. W. Redman; M. W. Halsey; Beau De Zart; Geo. Barfoot; Dan Campbell; J. Mitchell; H. Benjamin; O. S. Newton; Donald Keith; and Wm McNees; and said jurors having been called and sworn on voir dire and passed for cause by the court and

Said H. Benjamin having been peremptorily challenged by counsel for the plaintiff and by the court excused; and

Thereupon the name of A. R. Marsom was drawn from the jury box and said juror having been called and sworn on voir dire and counsel for the respective parties not desiring to exercise their right to further peremptorily challenge the jurors now in the box, it is by the court ordered that said jurors be sworn in a body as the jurors to try this cause, said jury being as follows, to wit:

THE JURY:

- | | |
|---------------------|-------------------|
| 1. H. M. Rosine, | 7. Dan Campbell, |
| 2. Otis E. Tiffany, | 8. J. Mitchell, |
| 3. C. W. Redman, | 9. A. R. Marsom |
| 4. M. W. Halsey, | 10. O. S. Newton, |
| 5. Beau De Zart, | 11. Donald Keith, |
| 6. Geo. Barfoot | 12. Wm McNees |

and

W. J. Wall having been called, sworn and having testified in behalf of the plaintiff and in connection with his testimony the following exhibits having been offered and admitted for Identification and in evidence, as indicated, on behalf of the plaintiff, to wit:

U. S. Ex. No. 1 (for Identification) Large bottle light colored liquid labelled Columbia Drug Co.

U. S. Ex. No. 2 (in Evidence) Small 16 oz bottle typewritten label

U. S. Ex. No. 3 (for Identification) Bottle and contents light liquid

U. S. Ex. No. 4 (for Identification) Small plain bottle light colored liquid and

Herbert Frank Maston having been called, sworn and having testified in behalf of the Government; and

W. J. Wall having been recalled and having testified further; and

C. W. Wheeler having been called, sworn and having testified in behalf of the Government; and in connection with his testimony the following exhibits having been offered and admitted for Identification and in evidence, as indicated, on behalf of the plaintiff, to wit;

U. S. Ex. No. 5 (for Identification) Green bottle labelled "Fernet"

U. S. Ex. No. 6 (for Identification) Hufeland bottle and contents

U. S. Ex. No. 7 (in Evidence) Small brown bottle and contents

U. S. Ex. No. 8 (in evidence) Cartons and two bottles—empty labelled Hufeland Bitters.
and

C. J. Wall having been recalled by the court and questioned; and

C. H. Wheeler having been recalled and having testified; and

It is now by the court ordered, upon motion of counsel for the Government that plaintiff's exhibits Nos. 1, 2, 3 and 4, heretofore offered for Identification, be admitted in evidence as U. S. Ex's Nos. 1, 2, 3 and 4 respectively; and

It is further by the court ordered, upon motion of counsel for the plaintiff, that U. S. Ex. No. 5, heretofore offered for Identification, be admitted in evidence as plaintiff's Ex. No. 5; and

Now, at the hour of 11:30 o'clock A. M. the court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause or any matter or thing therewith connected and that until this cause is submitted to them for their consideration under the instructions of this court they are not to speak to each other about this cause or anything therewith connected, and declares a recess; and

Now, at the expiration of said recess the court having reconvened and all being present as before, it is by the court ordered, upon motion of counsel for the plaintiff that plaintiff's Ex. No. 6, to wit: small bottle and contents in the Hubeland Bitter bottle, heretofore offered and admitted for Identification be now admitted in evidence; and

Thereupon the Government rests; and

Defendant herein, L. Raffour, having been called, sworn and having testified in behalf of himself, it is by the court ordered, at the hour of twelve o'clock, noon, that a recess be taken to the hour of two o'clock P. M. the jury having again received the aforementioned admonition; and

Now, at the hour of two o'clock P. M. the court having reconvened and all parties being present as before and counsel for respective parties having announced themselves as ready to proceed with the trial of this cause and the court having ordered that this cause be proceeded with; and

L. Raffour having resumed the stand and having testified further; and

Thereupon the defendant rests; and

C. J. Wall is recalled and testifies further for the Government on rebuttal; and at the hour of 2:37 o'clock P. M. John R. Layng Esq. argues to the jury on behalf of the Government and at the hour of 2:40 o'clock P. M. Emile E. Van Beber, Esq. argues to the jury on behalf of the defendant and at the hour of 2:50 o'clock P. M. said John R. Layng Esq. having argued to the jury in rebuttal; and

The court having instructed the jury with respect to the law involved in this cause and L. Sabin having been sworn to care for the jury during the deliberation of its verdict and the jury having retired at the hour of 3:20 o'clock P. M. to deliberate upon its verdict; and

Now, at the hour of 3:25 o'clock P. M.; the jury return into court in charge of their foreman and all being present as before and the court having asked said foreman if the jury has agreed upon a verdict and said foreman having replied that they have so agreed; and, upon being requested to present the same, and said verdict as so presented and read by the clerk of the court being as follows, to wit:

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. United States of America, Plaintiff vs. Lou Raffour, charged as Lou Taffour, defendant. No. 3404 Crim. S. D. We, the jury in the above entitled cause, find the defendant Lou Raffour, charged as Lou Taffour, guilty as charged in the first count of the Information; and guilty as charged in the second count of the Information and guilty as charged in the third count of the Information. Los Angeles, California, March 21, 1922. Irving J. Mitchell, Foreman, and

Now, good cause appearing therefor, it is by the court ordered that this cause be continued to March 27th, 1922. for sentence of defendant herein, said defendant to go on his present bond.

At a stated term to wit, the January A. D. 1922 Term of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the court

room thereof, in the City of Los Angeles, on Monday the 27th day of March in the year of our Lord one thousand nine hundred and twenty two.

PRESENT: THE HONORABLE OSCAR A. TRIPPET District Judge.

United States of America,	Plaintiff,)
		) No. 3404
	vs.)
		)Crim. S. D.
Lou Raffour, Defendant)

This cause coming on at this time for sentence of defendant Lou Raffour; John R. Layng, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, and defendant being present in court with his attorney E. E. Van Beber, Esq., the court now pronounces sentence upon defendant in this cause for the offence of which he now stands convicted, namely, violation of the National Prohibition Act of October 28th, 1919, and it is the judgment of the court that said defendant pay unto the United States of America a fine in the sum of \$500.00 on the first count and stand committed to the Santa Barbara County Jail until paid or defendant is discharged according to law, and it is further ordered that said defendant pay unto the United States of America a fine in the sum of \$500.00 on the second count and stand committed to the said Santa Barbara County Jail until said fine is paid or defendant is discharged according to law, said sentence imposed on the second count for failure to pay the fine assessed on said second count not

to commence to run until the expiration of sentence imposed on the first count for failure to pay the fine assessed on the said first count, and it is further ordered that said defendant stand committed to the Santa Barbara County Jail for the term and period of nine (9) months on the third count, said sentence imposed on the third count not to commence to run until the expiration of sentence imposed on the second count for failure to pay the fine assessed on the said second count; and it is further ordered by the court that defendant herein take his own commitment and enter said Santa Barbara County Jail on April first and that the liquor seized in this cause be turned over to the United States Marshal for destruction.

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA. SOUTHERN DIVISION.

United States of America, Plaintiff)
)
 Vs.) No. 3404
) Crim. S. D.
 Lou Raffour, charged as Lou Taffour,)
 Defendant.)

We, the Jury in the above-entitled cause, find the defendant Lou Raffour, charged as Lou Taffour, —Guilty as charged in the First Count of the Information; and—Guilty as charged in the Second

Count of the Information, and—Guilty as charged in the third count of the Information.

Los Angeles, California, March 21, 1922.

Irving J. Mitchell

FOREMAN.

Filed March 21, 1922

Chas. N. Williams

Clerk

By Louis J. Somers

deputy.

[Endorsed]: No. 3404 Crim. IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION United States of America vs. Lou Taffour true name Lou Raffour Judgment Roll Filed April 7 1922 CHAS. N. WILLIAMS Clerk By Louis J Somers, Deputy Clerk Recorded Minute Book No. 43 Page 208

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

UNITED STATES OF)
AMERICA,)
)
Plaintiff,)
) #3404 - Criminal
vs.) BILL OF EXCEPTION.
)
LOU RAFFOUR,)
)
Defendant.)

Be it remembered that heretofore, to wit, on the 21st day of March, 1922, the above entitled action came on regularly for trial the plaintiff appearing by John Layng, Assistant U. S. District Attorney and the defendant appearing by Emile Van Bever and George Appell, and that thereupon the following evidence was introduced and proceedings and exceptions taken, and no other, except as are hereinafter set forth.

W. J. WALL,

a witness called in behalf of the plaintiff, being first duly sworn, testified as follows:

That he was the Chief of Police, in the City of Santa Barbara, on or about the first day of October, 1921; that on that day he saw the defendant in his

(Testimony of W. J. Wall.)

place of business, at 536 State Street, Santa Barbara; that he went there to execute a search warrant issued out of the Police Court of Santa Barbara; that he searched the premises and found in a meat safe in the room behind the bar room, three bottles of wine; that he found in the money safe back of the bar, three bottles of moon-shine brandy; that the place of business was a regular bar, but is now used as a soft-drink parlor; that he initialed the bottles at the time he took them out of the money safe, and that he can identify the said three bottles by his initial. That he identified another bottle which is one of three found in the iron safe under the counter and which was labeled and initialed at the Police Station. That a fourth bottle was found under the bar from which the defendant served his drinks; that the said bottle was found by Officer Silva in his presence and marked by him when taken to the Police Station and labeled.

On cross-examination, the said witness testified that the bottles which he found on the premises of the defendant, and about which he testified, contained moon-shine brandy; that he had not tasted the contents of the bottles; that he had tested them with an alcoholic apparatus and found that they contained something between forty and fifty percent alcoholic content; that no record was kept of the test made.

HUBERT FRANK MANTUN

a witness called on behalf of the plaintiff, being first duly sworn testified as follows:

That he was a Police Officer in the City of Santa Barbara on October first, 1922, and that he accompanied Chief Wall to the defendant's premises at 532 State Street; that he served the search warrant on the defendant; that he saw the bottles offered as plaintiff's exhibits for identification on the premises of the defendant; that there were three bottles of wine which were in a meat safe or rather an ice box adjoining the kitchen; that there were two cases at the rear of the cafe filled with patent medicine; that he went into the back yard but did not go into the cellar; that in the back yard he found cases of empty bottles, beer bottles, some medicine bottles; some empty wine of pepsin bottles; that there was quite a pile of empty bottles in the back yard.

On cross-examination, the witness testified that show cases in the premises had pad-locks on them and contained patent medicines.

W. J. WALL

recalled for further examination testified:

That he went into the cellar of the defendant's establishment and found the cellar pretty well filled with empty bottles for bitters or wine called "Hufeland Bitters"; that he did not take any of the empty bottles with him.

C. H. WHEELER

a witness called on behalf of the plaintiff, being first duly sworn testified, that he is a Federal Agent of the Prohibition Department of the Government and was on the 17th day of October, 1921, at which time he visited the premises of the defendant, at 536 State Street, Santa Barbara, California.

Q. I will ask you to state the occasion of your going there and what you found, Mr. Wheeler.

A. "I visited there with a party of Federal Agents for the purpose of investigating what was being sold and what was being kept there, and whether it was in violation of the National Prohibition Act or not."

"I entered the premises with Agent Doyle and Mitchell, State Director Mitchell; made a search of the premises and found Hufeland Bitters, Kola Quina, Bitter Wine Tonic and a preparation, in my judgment, raisin wine, some kind of manufactured wine of which we have the samples here in the court room."

That he made an analysis for alcoholic content of all of the samples; that he took a sample from the container behind the bar of a kind of wine or grape juice; that the said sample tested 8.3% alcohol; that there were twenty-five or thirty cases, or more than twenty cases of empty bottles thrown promiscuously into a pile in the cellar; the cases held twelve bottles each; that he found a bottle behind the bar, three quarters full.

That plaintiff's exhibit #1, the large bottle, contained liquor of 50% alcoholic content as shown by hydrometer test.

W. J. WALL

recalled to the stand testified that the defendant had been in business in the City of Santa Barbara for a number of years, probably four or five; that in October, his business was principally soft drinks over the bar; that he did not have a drug store in his place, nor did he advertise as a drug store, nor did he have any accommodation for the sick.

That it was stipulated that plaintiff's Exhibits #2, 3 and 4 had the same alcoholic content as plaintiff's Exhibit #1; that it was stipulated that the report by R. F. Love, Government Chemist, that the Bitter Wine Tonic contained 17% alcohol; that the Kola Quina contained 19.7% alcohol and Ferra China contained 10.20%, may be accepted as evidence in the case.

C. H. WHEELER

returned to the stand and testified that plaintiff's Exhibit #5, showed 12.1% in alcoholic content.

L. RAFFOUR

the defendant, called as a witness in his own behalf, being first duly sworn testified, that resides in Santa Barbara and had resided there since his birth; that he is engaged in the soft drink business and was so engaged in October, 1921; that the bottles offered as Government Exhibits #1, 2 and 3, were taken out of his place of business, and at the time they were taken, were locked up in his safe.

Q. Could you, just briefly, tell us the circumstances

(Testimony of L. Raffour.)

surrounding these different bottles by yourself and the Chief of Police?

A. "Well, an officer came in and read a search warrant, I believe; the Chief came in and looked around the bar there, and finally asked me what I had in the safe; I asked him why, and he said, "can I see?" and I said "certainly." He said, "will you open the safe?" and I said "I will." So I opened the safe and he got hold of one of the bottles, and said, "What is this?"; and I said, "Liquor I have there for my own use."

That he had had the contents of the three bottles referred to as Government Exhibits #1, 2 and 3 before prohibition went into effect; that he had had them for several months; that he did not have them for sale; that he sold the particular articles, known as Fernet and Hufeland Bitters by the bottle; that he bought the Hufeland Bitters from the Tonkin Distributing Company, in San Francisco; that he had two quarts of wine and a bottle one fifth full in the ice chest in the kitchen which he used principally for cooking purposes; that he used his cellar for storing near beer and to store all bottles; that on the first day of October, 1921, he had several cases of bottles in the cellar ready to ship; that he buys bottles from boys and ships them back to the people from whom he buys goods.

That on the 21st day of October he had some cider in his place of business when Mr. Wheeler was there;

(Testimony of L. Raffour.)

that he had, what they call, unfermentable Sherry and Muskat in a five gallon barrel; that Mr. Wheeler took some of this unfermentable Sherry and Port; that on the 21st day of October, 1921, he did not sell any Hufeland Bitters or Fernet or Kola Quina or Ferro China or Raisin Wine, for beverage purposes, and he sold the preparations by the bottle.

Q. As a matter of fact, you put all of these articles in stock there after prohibition went into effect?

A. I bought them as a remedy, as a medical proposition, which everybody handles and was supposed to be permissible to be manufactured by the Government as a patent or otherwise; that is the only reason I bought them.

That he did not have any permit to dispense medicines or sell patent medicines issued by the State.

W. J. WALL

recalled in rebuttal, testified:

That he visited the premises of the defendant on or about April 8th, 1921; that he found, as far as he could remember, three gallons of what is called Moonshine Brandy.

Thereupon, the Court instructed the Jury as follows:
Gentlemen of the Jury:

There are three counts in this information against the defendant.

The first count charges that he had in his possession, for beverage purposes, three quarts of moonshine

brandy. It is not necessary for the government to prove the quantity charged-if he had any moonshine brandy in his possession as charged in this information that would satisfy the law in that respect.

The second count in the information charges that he had certain formulae, or preparations, one known as Kola Quina-Ferro China, Hufeland Bitters and raisin wine, in his possession, and that they contained alcohol in violation of the law.

And the third count charges that he maintained a room building or place at 536 State Street, in the City of Santa Barbara, where intoxicating liquor - moonshine brandy, Hufeland Bitters, raisin wine - - then and there containing alcohol in excess of one-half of one per cent in volume, were kept sealed and bottled for beverage purposes.

It is not necessary for the government to prove he had all these things there, but if he had some intoxicating liquor, as charged in the information, at that place for beverage purposes, the government has proven the case in that respect.

It will be convenient for me, gentlemen, in discussing this case, to refer to some provisions of the law, which I shall read to you. One, Section 3 of this law, Title II, reads:

“No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish, or possess any intoxicating liquor, except as

authorized in this Act, and all provisions of this Act shall be liberally construed, to the end that the use of intoxicating liquor as a beverage may be prevented.”

You will see by that provision of the law that there is nothing, scarcely, that can be done with it - - intoxicating liquor - - without violating the law, except you come within the provisions of the law which authorize the use or sale of it. Now, Section 4 of this law provides:

“Any person who shall knowingly sell any of the articles mentioned in paragraphs a, b, c and d of this section for beverage purposes, or any extract or syrup for intoxicating beverage purposes, or who shall sell any of the same under circumstances from which the seller might reasonably deduce the intention of the purchaser to use them for such purposes, or shall sell any beverage containing one-half of 1 per centum or more of alcohol by volume in which any extract, syrup, or other article is used as an ingredient,” shall be a violation of this law.

In determining, gentlemen, whether or not the defendant was keeping this intoxicating liquor - - these bitters, etc. - - there for beverage purposes, you shall take into consideration the circumstances surrounding the case. Nobody has come here and testified that the defendant had these things there for beverage purposes, and it would not be probable that anybody could be found who could testify to that fact, because his

intentions are locked up in his bosom, unless he has told somebody what he intended to do. There are no windows in a man's head, by which you can look in and see what his intentions are, but you have got to determine that from the circumstances surrounding the case -- as to his intentions. Whether he intended, or had these liquors there for the purpose of selling them for beverage purposes, must be determined from the circumstances.

Among the circumstances that I might mention here that you are to look to, are the business of the defendant; was he in the business of selling medicine; was he in the business of affording remedies for any person who was sick? A beverage is a thing that you take for the pleasure that you derive from it; medicine is something that you take to make you well, to cure your sickness. A beverage is a thing that you take (to use the language of the street), a thing that you take out of which you get a "kick." You get exhilaration, intoxication.

Now, what was the defendant doing with these bit-
ters? Was he administering to the sick, or was he disposing of this stuff for the pleasure the purchaser got out of it? That is the gist of that phase of this case, and you are to determine it from the circumstances surrounding the case.

Now, I wish to read some more of this law. The Volstead Act now authorizes the department, in charge of the enforcement of the law, to make certain rules

and regulations. Section 67 of the regulations provides:

“Preparations manufactured under authority of this article may not be sold or used as beverages or for intoxicating beverage purposes, or under circumstances from which an intent on the part of the purchaser to use for such purposes might be reasonably deduced.”

Those are the articles that the government permits to be manufactured for medicinal purposes.

Now, Section 68 reads as follows:

“All persons desiring to use intoxicating liquor as provided in this article or, in the case of retail druggists or pharmacists, to sell intoxicating liquor in retail quantities, must file application on Form 1404 in the manner provided by Article III, and secure permit therefore from the Commissioner.”

And in determining what this defendant had these things in his possession for, you would, quite naturally, inquire: Has he got a permit from the Commissioner to handle them? The burden is on him to show that he had a permit.

Section 69 provides:

“A retail pharmacist, or a retail druggist where the sale is made through a retail pharmacist, may sell distilled spirits, wines, or the alcoholic medicinal preparations fit for beverage purposes which are authorized to be manufactured by Article XI in quantities of less than 5 wine gallons to other

persons holding permits entitling them to procure such liquor for non-beverage purposes on receipt of permits to purchase, Form 1410."

That is to say, the government permits the use of certain intoxicating liquors, to be mixed with cordials, etc., but the alcoholic content is kept below one-half of 1 per cent, and these permits are to be given to people who are supposed to be responsible, and will keep such alcoholic content down.

"Retail druggists or pharmacists may not sell intoxicating liquor in quantities of 5 wine gallons or more unless they are also wholesale druggists or wholesale pharmacists and hold permits to sell intoxicating liquor in wholesale quantities as provided in Article IX. No sale at retail may be made except through a pharmacist."

"b" Alcoholic medicinal preparations, fit for use for beverage purposes, as are authorized to be manufactured by Article XI hereof, and other liquor may be sold by retail pharmacists, or by retail druggists where the sale is made through a pharmacist, upon physicians' prescriptions to persons who do not hold permits to sell or use intoxicating liquor and without the necessity of receiving permits to purchase,".

"d" Retail druggists or pharmacists selling intoxicating liquors as such, whether upon physicians' prescriptions or otherwise are required to pay special tax as liquor dealers under the in-

ternal revenue laws, and to keep special tax stamp as such conspicuously posted.”

The United States Attorney has asked me to read Section 33, Title II, of the law, which I shall read:

“After February 1, 1920, the possession of liquors by any person not legally permitted under this title to possess liquor shall be prima facie evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title.

Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one’s private dwelling only and such liquor need not be reported, provided such liquors are for use only for the personal consumption of the owner thereof and his family residing in such dwelling and of his bona fide guests when entertained by him therein; and the burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed, and used.”

That is to say, gentlemen, if a person has had in his possession at the time this law went into effect in-

toxicating liquor, as many people undoubtedly did have, in their cellars or otherwise -- intoxicating liquor -- they had a right, in their dwelling, to keep it -- in their dwelling. They had no right -- nobody has any right -- to acquire any intoxicating liquor at this time from anybody, or for any purpose except medicinal purposes, by virtue of a prescription of a physician.

Now gentlemen, the law requires, in every criminal case, that the defendant be proven guilty beyond a reasonable doubt. I have heretofore explained, I presume, to everyone of you what reasonable doubt means, and that applies to this case as well as every other criminal case. You are the exclusive judges of the facts and the credibility of the witnesses, and if I make any comment upon either you are not bound by such comment, but should exercise your own independent judgment upon such matters.

The third count is the charge of maintaining a nuisance, Section 21 of this law tells us what a nuisance is:

“A nuisance is a ‘room, house, building, boat, vehicle, structure, or place where intoxicating liquor is manufactured, sold, kept, or bartered in violation of this title, and all intoxicating liquor and property kept and used’, etc., shall be destroyed.

Gentlemen, if you find that this defendant kept intoxicating liquors in the place he had there as a soft drink place, in violation of the law; that is to say, if he kept these things there for beverage purposes, if

he kept them there unlawfully, if it was not liquor that was acquired before the law went into effect, and if that place was not his residence, he would be maintaining a nuisance, would be guilty under the third charge in this information.

Thereafter, the Jury returned a verdict of Guilty upon all three counts of the information herein.

Thereafter the Court sentenced the defendant to imprisonment in the County Jail of Santa Barbara County for a period of nine months on the third count of the information herein, and imposed a fine of Five Hundred Dollars on the first count of the information herein, and a fine of Five Hundred Dollars on the second count of the information herein.

Thereafter the defendant served and filed within the time required by law, and in the manner required by law, his petition for Writ of Error which said petition was filed on the 3d day of May, 1922.

That, thereafter, on the 3 day of May, 1922, the defendant prepared, served and filed, his Assignment of Errors.

That said Bill of Exception contains all of the evidence, received and heard by the court in the said case and contains the proceedings in the trial of said cause as aforesaid, and same is hereby settled and allowed this 5th day of July, 1922.

Trippet

District Judge.

It is stipulated that the within Bill of Exceptions contains all of the evidence received and heard by the court in said case and contains the proceedings in the trial of said cause as aforesaid.

J. C. BURKE,

U. S. District Attorney

BY John R Layng

Assistant U. S. District Attorney

Leo V Youngworth

Harry J McClean

Attorneys for Appellant.

Received copy of the within proposed Bill of Exceptions this 30th day of June, 1922.

J. C. BURKE,

U. S. District Attorney

BY John R Layng

Assistant U. S. District Attorney

[Endorsed]: #3404 Cr. IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. BILL OF EXCEPTION FILED JUL 6 - 1922 at — Min. past — o'clock — M CHAS. N. WILLIAMS, Clerk Murry E. Wire Deputy

IN THE DISTRICT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,	)	No. 3404 Criminal
)	
vs.	)	ASSIGNMENT OF
	)	ERROR AT LAW
LOU RAFFOUR,)	
)	
Defendant.)	

The defendant in this action in connection with his petition for a writ of error makes the following assignment of errors which he avers occurred on the trial of the cause, to -wit:

I.

The court erred in using the following language in the charge to the Jury: "Now Gentlemen, the law requires in every criminal case that the defendant be proven guilty beyond a reasonable doubt. I have heretofore explained, I presume, to every one of you what reasonable doubt means, and that applies to this case as well as every other criminal case."

II.

The court erred in using the following language in the charge to the Jury: "Gentlemen, if you find that

this defendant kept intoxicating liquors in the place he had there as a soft drink place, in violation of the law; that is to say, if he kept these things there for beverage purposes, if he kept them there unlawfully, if it was not liquor that was acquired before the law went into effect, and if that place was not his residence he would be maintaining a nuisance, and would be guilty under the third charge in this information."

III.

The court erred in using the following language in the charge to the jury: "The Government permits the use of certain intoxicating liquors to be mixed with cordials, but the alcoholic content is kept below one-half of one percent, and these permits are to be given to people who are supposed to be responsible and will keep such alcoholic content down."

IV.

The court erred in using the following language in the charge to the jury: "The burden of proof shall be upon the possessor in any action concerning the same to prove that such liquor was lawfully acquired, possessed and used."

V.

The court erred in admission of evidence offered by the plaintiff in the following instance, to-wit:

In the testimony given by Hubert Frank Manton, a witness produced on behalf of the plaintiff, who testified that he saw a large number of empty bottles, medicine and bitters bottles in the rear of the defend-

ant's place of business, altogether about twenty cases or more.

VI.

The court erred in entering judgment upon the verdict for the reason that the evidence is insufficient to sustain the verdict.

WHEREFORE, the defendant prays that the judgment of the District Court may be reversed.

Leo V. Youngworth

Harry J. McClean

Attorneys for defendant.

[Endorsed]: Cr. 3404-S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. ASSIGNMENT OF ERROR AT LAW FILED MAY 3 - 1922 at — min. past — o'clock — M. CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy HARRY J. McCLEAN 602 Mer. Nat'l Bk. Bldg., Los Angeles Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,	)	No. 3404 Criminal
Plaintiff,)	
vs.	)	PETITION FOR WRIT
	)	OF ERROR AT LAW.
LOU RAFFOUR,)	
Defendant.)	

And now comes Lou Raffour, defendant herein, and says that on or about the 27th day of March, 1922, this court entered judgment herein against the defendant, whereby the defendant was sentenced to imprisonment in the County Jail of Santa Barbara County for a period of nine months on the third count of the information herein, and to pay a fine of Five Hundred Dollars (\$500.00) on the first count of the information herein and a fine of Five Hundred Dollars (\$500.00) on the second count of the information herein; and in which said judgment and the proceedings had thereunto in this cause, certain errors were committed to the prejudice of this defendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant prays that a writ of error may issue in this behalf out of the United States District Court for the Southern District of California, Southern Division, to the Circuit Court of Appeals for the Ninth Circuit, for the many errors so complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated, may be sent to the Circuit Court of Appeals.

Leo V Youngworth

Harry J McClean

Attorneys for Defendant.

[Endorsed]: Cr. 3404 S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff. vs. LOU RAFFOUR, Defendant. PETITION FOR WRIT OF ERROR AT LAW FILED MAY 3 - 1922 at —min. past —o'clock —M CHAS. N. WILLIAMS Clerk Murray E Wire Deputy HARRY J. McCLEAN 602 Mer. Nat'l Bk. Bldg. Los Angeles. Attorney for Defendant. M-2896

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

)	
	)	No. 3404 Criminal
UNITED STATES OF)	
AMERICA,)	
Plaintiff,)	
vs.	)	<u>ORDER</u>
LOU RAFFOUR,)	
Defendant.)	

This 3rd day of May, 1922, came the defendant, by his attorneys, and filed herein and presented to the court his petition praying for the allowance of a writ of error, an assignment of errors intended to be urged by him, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial District, and that such other and further proceedings may be had as may be proper in the premises, in consideration whereof, the court does allow the writ of error upon the defendant giving bond according to law in the sum of \$1000.00 which shall operate as a supersedeas bond, and upon the de-

fendant giving bond according to law in the further sum of \$250.00 for costs.

Trippet
District Judge

Approved as to form as provided in Rule 45,
J. C. BURKE,
U. S. District Attorney,
By Mack Meader
Ass't. U. S. District Attorney

[Endorsed]: Cr. 3404 S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. ORDER FILED MAY-4, 1922 at —min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy HARRY J. McCLEAN 602 Mer. Nat'l Bk. Bldg. Los Angeles. Attorney for Defendant.

IN THE DISTRICT COURT OF THE UNITED
STATES IN AND FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

UNITED STATES OF)	No. 3404 Criminal
AMERICA,)	
Plaintiff,)	
))	
vs.)	<u>SUPERSEDEAS BOND</u>
))	
LOU RAFFOUR,)	
))	
Defendant.)	

KNOW ALL MEN BY THESE PRESENTS:
That we Lou Raffour, and Adrian Raffour as principal, and cash, and liberty bonds as sureties, jointly and severally acknowledge ourselves indebted to the United States of America in the sum of Twelve Hundred and fifty (\$1250.00) Dollars, lawful money of the United States of America, which we have deposited herewith, upon the following conditions:

WHEREAS, the said Lou Raffour has sued out a writ of error in judgment of the District Court of the United States, for the Southern District of California, Southern Division, in the case in said court wherein the United States of America are plaintiffs, and the said Lou Raffour is defendant, for review of said judgment in the United States Circuit Court of Appeals for the Ninth Circuit.

Now, if the said Lou Raffour shall appear and surrender himself in the District Court of the United

States, for the Southern District of California, Southern Division, on and after the filing in the said District Court of the mandate of the said Circuit Court of Appeals and from time to time thereafter as he may be required to answer any further proceedings and abide by and perform any judgment or order which may be had or rendered therein in this case and shall abide by and perform any judgment or order which may be rendered in the said United States Circuit Court of Appeals for the Ninth Circuit and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise, to remain in full force and virtue.

WITNESS our hands and seals this 3rd day of May, A. D. 1922.

Lou Raffour. (SEAL)
A. Raffour,
Adrian Raffour.

Subscribed and sworn to before me this 3 day of May, 1922.

Chas. N. Williams, Clerk
U. S. District Court, Southern District of California.
(Seal) By R S Zimmerman Deputy

Taken and approved this 4 day of May, 1922, before me.

Oscar A Trippet
District Judge.

Examined and recommended for approval as provided in Rule 29.

Leo V Youngworth

Atty at Law

O K.

Mack Meader

Asst. U. S. Atty.

[Endorsed]: Cr. 3404—S. D. IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION. UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. SUPERSEDEAS BOND FILED MAY—4 1922 at —min. past —o'clock —M CHAS. N. WILLIAMS, Clerk Murray E Wire Deputy HARRY J. McCLEAN 602 Mer. Nat'l Bk. Bldg. Los Angeles Attorney for Defendant.

UNITED STATES OF AMERICA DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. LOU RAFFOUR, Defendant. Clerk's Office No. Cr. 3404, S. D. PRAECIPE

TO THE CLERK OF SAID COURT:

Sir:

Please prepare and make return to the writ of error herein and make copies of the following papers on file in your office:

- 1. The information in full;
2. The minutes of trial including verdict;
3. Judgment;
4. Bill of exceptions;
5. Assignment of errors;
6. Petition for writ of error;
7. Order granting writ of error;
8. Citation on writ of error;
9. Writ of error;
10. Supersedeas bond;

11. Bond for costs;

12. Praecipe.

Certify to this record and return with the original writ of error.

Dated this 12 day of May, 1922.

Leo V Youngworth

Harry J McClean

Attorneys for Plaintiffs in Error.

Service of the within praecipe admitted this 31 day of May, 1922

Joseph C Burke

U. S. District Attorney

By John R Layng

Ass't. U. S. District Attorney

[Endorsed]: No. 3404. S. D. UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA UNITED STATES OF AMERICA, Plaintiff vs. LOU RAFFOUR, Defendant PRAECIPE for Record of proceedings in error FILED JUN 16, 1922 at —min. past —o'clock —M CHAS. N. WILLIAMS Clerk Murray E Wire Deputy

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

United States of America,)	
)	
Plaintiff,)	
vs.	)	Clerk's
	)	Certificate.
Lou Raffour, charged as Lou Taffour,)	
)	
Defendant.)	

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 48 pages, numbered from 1 to 48 inclusive, to be the Transcript of Record on Writ of Error in the above entitled cause, as printed by plaintiff in error and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation, writ of error, information, minutes of the court and judgment, bill of exceptions, assignment of error, petition for writ of error, order, supersedeas bond and bond on appeal, praecipe.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Writ of Error amount to and that said amount has been paid me by the
herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this day of July, in the year of our Lord One Thousand Nine Hundred and Twenty-one, and of our Independence the One Hundred and Forty-seventh.

CHAS. N. WILLIAMS,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.